

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE ENROLLED ACT No. 1671

AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-21.5-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a)** The office of environmental adjudication is established to review, under this article, decisions of the commissioner of the department of environmental management.

(b) The office of environmental adjudication shall:

(1) conduct adjudicatory hearings required to implement:

~~(1)~~ **(A)** air pollution control laws (as defined in IC 13-11-2-6), water pollution control laws (as defined in IC 13-11-2-261), environmental management laws (as defined in IC 13-11-2-71), and IC 13-19; and

~~(2)~~ **(B)** rules of:

~~(A)~~ **(i)** the air pollution control board;
~~(B)~~ **(ii)** the water pollution control board;
~~(C)~~ **(iii)** the solid waste management board; and
~~(D)~~ **(iv)** the financial assurance board; **and**

~~shall be conducted by the office of environmental adjudication under IC 4-21.5:~~

(2) notify a board referred to in subdivision (1)(B) of a final order of the office of environmental adjudication that interprets:

(A) a rule of the board; or

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(B) a statute under which a rule of the board is authorized.

SECTION 2. IC 4-22-2-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28. (a) The Indiana economic development council may review and comment on any proposed rule and may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on businesses. The agency that intends to adopt the proposed rule shall respond in writing to the Indiana economic development council concerning the council's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

(b) The agency shall also submit a proposed rule with an estimated economic impact greater than five hundred thousand dollars (\$500,000) on the regulated entities to the legislative services agency after the preliminary adoption of the rule. **Except as provided in subsection (c)**, before the adoption of the rule, the legislative services agency shall prepare, not more than forty-five (45) days after receiving a proposed rule, a fiscal analysis concerning the effect that compliance with the proposed rule will have on the:

- (1) state; and
- (2) entities regulated by the proposed rule.

The fiscal analysis must contain an estimate of the economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal analysis is a public document. The legislative services agency shall make the fiscal analysis available to interested parties upon request. The agency proposing the rule shall consider the fiscal analysis as part of the rulemaking process and shall provide the legislative services agency with the information necessary to prepare the fiscal analysis. The legislative services agency may also receive and consider applicable information from the regulated entities affected by the rule in preparation of the fiscal analysis.

(c) With respect to a proposed rule subject to IC 13-14-9:

- (1) the department of environmental management shall give written notice to the legislative services agency of the proposed date of preliminary adoption of the proposed rule not less than sixty-six (66) days before that date; and**
- (2) the legislative services agency shall prepare the fiscal analysis referred to in subsection (b) not later than twenty-one (21) days before the proposed date of preliminary adoption of the proposed rule.**

SECTION 3. IC 13-14-1-11.5, AS AMENDED BY P.L.261-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2003]: Sec. 11.5. (a) If the department ~~utilizes~~ **proposes to utilize** a policy or statement that:

- (1) interprets, supplements, or implements a statute or rule;
- (2) has not been adopted in compliance with IC 4-22-2;
- (3) is not intended by the department to have the effect of law; and
- (4) is not related solely to internal department organization;

the **proposed** policy or statement may not be put into effect until **the requirements of subsection (b) have been met.**

(b) The department shall present the proposed policy or statement under subsection (a) to the appropriate board. At least forty-five (45) days before the presentation, the department shall make available to the public, including posting on the department's web site:

- (1) the proposed policy or statement;**
- (2) information on the availability for public inspection of all materials relied upon by the department in the development of the proposed policy or statement, including, if applicable:**
 - (A) health criteria;**
 - (B) analytical methods;**
 - (C) treatment technology;**
 - (D) economic impact data;**
 - (E) environmental assessment data; and**
 - (F) other background data;**
- (3) the date, time, and location of the presentation under this subsection to the appropriate board; and**
- (4) information regarding the opportunity for a person to comment to the department and the appropriate board on the proposed policy or statement before or at the time of the presentation under this subsection.**

The department shall provide to the appropriate board at the time of the presentation under this subsection a copy of all comments made by a person under subdivision (4). The proposed policy or statement may not be put into effect until thirty (30) days after the policy or statement is made available for public inspection and comment and presented to the appropriate board.

~~(b)~~ **(c) If the department utilizes a policy or statement described in subsection (a), the department shall distribute:**

- (1) two (2) copies of the policy or statement to the publisher of the Indiana Register for publication in the Indiana Register; and**
- (2) the copies required under IC 4-23-7.1-26 to the Indiana library and historical department.**



~~(c)~~ (d) The department shall:

- (1) maintain a current list of all department policies and statements described in subsection (a) that the department may use in the department's external affairs; and
- (2) update the list at least one (1) time each month.

~~(d)~~ (e) The department shall include the following information on the list described in subsection ~~(c)~~ (d) for each policy or statement:

- (1) The title of the policy or statement.
- (2) The identification number of the policy or statement.
- (3) The date the policy or statement was originally adopted.
- (4) The date the policy or statement was last revised.
- (5) A reference to all other policies or statements described in subsection (a) that are repealed or amended by the policy or statement.
- (6) A brief description of the subject matter of the policy or statement.

~~(e)~~ (f) At least one (1) time every three (3) months, the department shall distribute two (2) copies of the list maintained and updated under subsection ~~(c)~~ (d) to the following:

- (1) The publisher of the Indiana Register.
- (2) The Indiana library and historical department.

SECTION 4. IC 13-14-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. The department shall provide notice in the Indiana Register of the first public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

- (1) Identify the authority under which the proposed rule is to be adopted.
- (2) Describe the subject matter and the basic purpose of the proposed rule. The description required by this subdivision must:
 - (A) include a listing of all alternatives being considered by the department at the time of the notice; ~~and must~~

(B) include:

- (i) a statement indicating whether each alternative listed under clause (A) is imposed under federal law;**
- (ii) a statement explaining how each alternative listed under clause (A) that is not imposed under federal law differs from federal law; and**
- (iii) any information known to the department about the potential fiscal impact of each alternative under clause (A) that is not imposed under federal law; and**
- (C) set forth the basis for each alternative listed under clause**

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(3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.

(4) Request the submission of alternative ways to achieve the purpose of the proposed rule.

(5) Request the submission of comments, including suggestions of specific language for the proposed rule.

(6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

SECTION 5. IC 13-14-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. The department shall provide notice in the Indiana Register of the second public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

(1) Contain the full text of the proposed rule, as provided under IC 4-22-2-24(c).

(2) Contain a summary of the response of the department to written comments submitted under section 3 of this chapter during the first public comment period.

(3) Request the submission of comments, including suggestions of specific amendments to the language contained in the proposed rule.

(4) Contain the full text of the commissioner's written findings under section 7 of this chapter, if applicable.

(5) Identify each element of the proposed rule that imposes a restriction or requirement on persons to whom the proposed rule applies that is not imposed under federal law.

(6) With respect to each element identified under subdivision (5), identify:

(A) the environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement to protect human health and the environment;

(B) examples in which federal law is inadequate to provide the protection referred to in clause (A); and

(C) the:

(i) estimated fiscal impact; and

(ii) expected benefits;

based on the extent to which the proposed rule exceeds the requirements of federal law.

(7) For any element of the proposed rule that imposes a

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restriction or requirement that is not imposed under federal law, describe the availability for public inspection of all materials relied upon by the department in the development of the proposed rule, including, if applicable:

- (A) health criteria;
- (B) analytical methods;
- (C) treatment technology;
- (D) economic impact data;
- (E) environmental assessment data;
- (F) analyses of methods to effectively implement the proposed rule; and
- (G) other background data.

SECTION 6. IC 13-14-9-4.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4.2. Not less than fourteen (14) days before the date of preliminary adoption of a proposed rule by a board, the department shall make available to the board the fiscal analysis prepared by the legislative services agency with respect to the proposed rule under IC 4-22-2-28(c).**

SECTION 7. IC 13-14-9-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4.5. (a) Except for a rule:**

- (1) that has been preliminarily adopted by a board in a form that is:

- (A) identical to; or
- (B) not substantively different from;

the proposed rule published in a second notice under section 4 of this chapter; or

- (2) for which the commissioner has made a determination and prepared written findings under section 7 or 8 of this chapter;

a board may not adopt a rule under this chapter until the board has conducted a third public comment period that is at least twenty-one (21) days in length.

(b) The department shall publish notice of a third public comment period with the:

- (1) text; ~~and~~
- (2) summary; ~~and~~
- (3) **fiscal analysis;**

that are required to be published in the Indiana Register under section 5(a)(2) of this chapter.

(c) The notice of a third public comment period that must be published in the Indiana Register under subsection (b) must request the

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submission of comments, including suggestions of specific amendments, that concern only the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a second notice under section 4 of this chapter.

SECTION 8. IC 13-14-9.5-1.1, AS ADDED BY P.L.146-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1.1. (a) This section applies to the following:

(1) A rule that is required to receive or maintain:

- (A) delegation;
- (B) primacy; or
- (C) approval;

for state implementation or operation of a program established under federal law.

(2) A rule that is required to begin or continue receiving federal funding for the implementation or operation of a program.

(b) A rule described in subsection (a) does not expire under this chapter.

(c) In the seventh year after the effective date of a rule or an amendment to a rule described in subsection (a), the department shall publish a notice in the Indiana Register. The notice may contain a list of several rules that have been effective for seven (7) years. A separate notice must be published for each board with rulemaking authority. A notice under this subsection must provide for the following:

- (1) A written comment period of at least thirty (30) days.
- (2) A request for comments on specific rules that should be reviewed through the regular rulemaking process under IC 13-14-9.
- (3) A notice of public hearing before the appropriate board.
- (4) The information required to be identified or described under IC 13-14-9-4(5) through IC 13-14-9-4(7) in the same manner that would apply if the proposed renewal of the expired rule were a proposal to adopt a new rule.**

(d) The department shall:

- (1) prepare responses to all comments received during the comment period; and
- (2) provide all comments and responses to the board during the public board hearing;

described in subsection (c).

(e) The board, after considering the written comments and responses, as well as testimony at the public hearing described in subsection (c), shall direct the department on whether additional

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rulemaking actions must be initiated to address concerns raised to the board.

(f) For the rules described in subsection (a) that are effective on or before July 1, 2001, the notice described in subsection (c) shall be published in the Indiana Register before December 31, 2008.

SECTION 9. IC 13-15-4-1, AS AMENDED BY P.L.138-2000, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. **(a)** Except as provided in sections 2, 3, and 6 of this chapter, the commissioner shall approve or deny an application filed with the department after July 1, 1995, within the following number of days:

(1) Three hundred sixty-five (365) days for an application concerning the following:

- (A) A new hazardous waste or solid waste landfill.
- (B) A new hazardous waste or solid waste incinerator.
- (C) A major modification of a solid waste landfill.
- (D) A major modification of a solid waste incinerator.
- (E) A new hazardous waste treatment or storage facility.
- (F) A new Part B permit issued under 40 CFR 270 et seq. for an existing hazardous waste treatment or storage facility.
- (G) A Class 3 modification under 40 CFR 270.42 to a hazardous waste landfill.

(2) Two hundred seventy (270) days for an application concerning the following:

- (A) A Class 3 modification under 40 CFR 270.42 of a hazardous waste treatment or storage facility.
- (B) A major new National Pollutant Discharge Elimination System permit.

(3) One hundred eighty (180) days for an application concerning the following:

- (A) A new solid waste processing or recycling facility.
- (B) A minor new National Pollutant Discharge Elimination System individual permit.
- (C) A permit concerning the land application of wastewater.

(4) One hundred fifty (150) days for an application concerning a minor new National Pollutant Discharge Elimination System general permit.

(5) One hundred twenty (120) days for an application concerning a Class 2 modification under 40 CFR 270.42 to a hazardous waste facility.

(6) Ninety (90) days for an application concerning the following:

- (A) A minor modification to a solid waste landfill or

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incinerator permit.

(B) A wastewater facility or water facility construction permit.

(7) The amount of time provided for in rules adopted by the air pollution control board for an application concerning the following:

(A) An air pollution construction permit that is subject to 326 IAC 2-2 and 326 IAC 2-3.

(B) An air pollution facility construction permit (other than as defined in 326 IAC 2-2).

(C) Registration of an air pollution facility.

(8) Sixty (60) days for an application concerning the following:

(A) A Class 1 modification under 40 CFR 270.42 requiring prior written approval, to a hazardous waste:

(i) landfill;

(ii) incinerator;

(iii) treatment facility; or

(iv) storage facility.

(B) Any other permit not specifically described in this section for which the application fee exceeds ~~one hundred forty-nine~~ dollars ~~(\$100)~~ (\$49) and for which a time frame has not been established under section 3 of this chapter.

(b) When a person holding a valid permit concerning an activity of a continuing nature has made a timely and sufficient application for a renewal permit under the rules of one (1) of the boards, the commissioner shall approve or deny the application on or before the expiration date stated in the permit for which renewal is sought.

SECTION 10. IC 13-15-4-11, AS AMENDED BY P.L.184-2002, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) If an applicant is operating pursuant to a continuation of an existing permit pending determination of an application for a new or renewed permit under IC 13-15-3-6, the applicant may proceed under this section after notifying the commissioner in writing of its intent to do so.

(b) If the commissioner does not issue or deny a permit within the time specified under sections 1 through 6 of this chapter, the applicant may proceed under this section. After reaching an agreement with the commissioner or after consulting with the commissioner for thirty (30) days and failing to reach an agreement, the applicant may choose to proceed under one (1) of the following alternatives:

(1) The:

(A) applicant may, **except as provided in section 12.1 of this**



chapter, request and receive a refund of a permit application fee paid by the applicant; and

(B) commissioner shall do the following:

- (i) Continue to review the application.
- (ii) Approve or deny the application as soon as practicable.
- (iii) **Except as provided in section 12.1 of this chapter**, refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(2) The:

(A) applicant may:

- (i) **except as provided in section 12.1 of this chapter**, request and receive a refund of a permit application fee paid by the applicant; and
- (ii) submit to the department a draft permit and any required supporting technical justification for the permit; and

(B) commissioner shall do the following:

- (i) Review the draft permit.
- (ii) Approve, with or without revision, or deny the draft permit in accordance with section 16 of this chapter.
- (iii) **Except as provided in section 12.1 of this chapter**, refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(3) The:

(A) applicant may hire an outside consultant to prepare a draft permit and any required supporting technical justification for the permit; and

(B) commissioner shall:

- (i) review the draft permit; and
- (ii) approve, with or without revision, or deny the draft permit in accordance with section 16 of this chapter.

SECTION 11. IC 13-15-4-12.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 12.1. An applicant may not receive a refund of a permit application fee if the permit application concerned the renewal of a permit.**

SECTION 12. [EFFECTIVE UPON PASSAGE] (a) **As used in this SECTION, "boards" refers to:**

- (1) the air pollution control board;**
- (2) the water pollution control board; and**
- (3) the solid waste management board.**



(b) Before November 1, 2003, the environmental quality service council shall:

(1) consider whether the rulemaking operations of the boards are sufficiently independent of the influence of:

- (A) the department of environmental management; and**
- (B) other state agencies or entities;**

(2) consider the overall efficiency of rulemaking operations of the boards; and

(3) submit its final report on the matters described in subdivisions (1) and (2) to:

- (A) the governor; and**
- (B) the executive director of the legislative services agency.**

(c) As part of its consideration under subsections (b)(1) and (b)(2), the environmental quality service council shall examine the following:

- (1) The composition of the boards.**
- (2) The appointing authorities for members of the boards.**
- (3) The extent to which the boards control staff who serve the boards.**
- (4) The sources and availability of data concerning:**
 - (A) the fiscal impact; and**
 - (B) other aspects;****of proposed rules.**
- (5) The involvement of employees of:**
 - (A) the department of environmental management; and**
 - (B) other state agencies or entities;****in the rulemaking process.**
- (6) The procedures to initiate and adopt proposed rules.**
- (7) The procedures to determine which issues are addressed in proposed rules and which issues are addressed in nonrule policy documents.**
- (8) The requirements for public notice and public participation in the rulemaking process.**
- (9) The means by which other states maintain independent and efficient operations of environmental rulemaking entities.**
- (10) Any other matter the environmental quality service council considers appropriate.**

(d) This SECTION expires January 1, 2004.

SECTION 13. [EFFECTIVE JULY 1, 2003] (a) IC 13-14-1-11.5(b), as amended by this act, applies to proposed policies or statements presented by the department of environmental management to the appropriate board after June 30, 2003.

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(b) The following, all as amended by this act, apply to proposed rules for which the department of environmental management provides notice in the Indiana Register of the first public comment period required by IC 13-14-9-3, as amended by this act, after June 30, 2003:

- (1) IC 4-22-2-28.**
- (2) IC 13-14-9-3.**
- (3) IC 13-14-9-4.**
- (4) IC 13-14-9-4.5.**
- (5) IC 13-14-9.5-1.1.**

(c) This SECTION expires January 1, 2004.

SECTION 14. An emergency is declared for this act.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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